

AN ACT

relating to the regulation of prescriptions for controlled substances, including certain procedures applicable to electronic prescriptions for Schedule II controlled substances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.061, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A person shall provide the department with the person's Federal Drug Enforcement Administration number not later than the 45th day after the director issues a registration to the person under this subchapter.

SECTION 2. Subsections (b), (c), (d-1), (e) through (h), (k), and (q), Health and Safety Code, are amended to read as follows:

(b) Except in an emergency as defined by rule of the director or as provided by Subsection (o) or Section 481.075(j) or (m), a person may not dispense or administer a controlled substance listed in Schedule II without a [the] written prescription of a practitioner on an official prescription form or without an electronic prescription that meets the requirements of and is completed by the practitioner in accordance with Section 481.075. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who

1 administers or dispenses the substance shall:

2 (1) if the person is a prescribing practitioner or a
3 pharmacist, promptly comply with Subsection (c); or

4 (2) if the person is not a prescribing practitioner or
5 a pharmacist, promptly write the oral or telephonically
6 communicated prescription and include in the written record of the
7 prescription the name, address, [~~department registration number,~~]
8 and Federal Drug Enforcement Administration number issued for
9 prescribing a controlled substance in this state of the prescribing
10 practitioner, all information required to be provided by a
11 practitioner under Section 481.075(e)(1), and all information
12 required to be provided by a dispensing pharmacist under Section
13 481.075(e)(2).

14 (c) Not later than the seventh day after the date a
15 prescribing practitioner authorizes an emergency oral or
16 telephonically communicated prescription, the prescribing
17 practitioner shall cause a written or electronic prescription,
18 completed in the manner required by Section 481.075, to be
19 delivered [~~in person or mailed~~] to the dispensing pharmacist at the
20 pharmacy where the prescription was dispensed. A written
21 prescription may be delivered in person or by mail. The envelope of
22 a prescription delivered by mail must be postmarked not later than
23 the seventh day after the date the prescription was authorized. On
24 receipt of a written [~~the~~] prescription, the dispensing pharmacy
25 shall file the transcription of the telephonically communicated
26 prescription and the pharmacy copy and shall send information to
27 the director as required by Section 481.075. On receipt of an

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1 electronic prescription, the pharmacist shall annotate the
2 electronic prescription record with the original authorization and
3 date of the emergency oral or telephonically communicated
4 prescription.

5 (d-1) Notwithstanding Subsection (d), a prescribing
6 practitioner may issue multiple prescriptions authorizing the
7 patient to receive a total of up to a 90-day supply of a Schedule II
8 controlled substance if:

9 (1) each separate prescription is issued for a
10 legitimate medical purpose by a prescribing practitioner acting in
11 the usual course of professional practice;

12 (2) the prescribing practitioner provides ~~written~~
13 instructions on each prescription to be filled at a later date
14 indicating the earliest date on which a pharmacy may fill each
15 prescription;

16 (3) the prescribing practitioner concludes that
17 providing the patient with multiple prescriptions in this manner
18 does not create an undue risk of diversion or abuse; and

19 (4) the issuance of multiple prescriptions complies
20 with other applicable state and federal laws.

21 (e) The partial filling of a prescription for a controlled
22 substance listed in Schedule II is permissible, if the pharmacist
23 is unable to supply the full quantity called for in a written or
24 electronic prescription or emergency oral prescription and the
25 pharmacist makes a notation of the quantity supplied on the face of
26 the written prescription, on the ~~ex~~ written record of the
27 emergency oral prescription, or in the electronic prescription

1 record. The remaining portion of the prescription may be filled
 2 within 72 hours of the first partial filling; however, if the
 3 remaining portion is not or cannot be filled within the 72-hour
 4 period, the pharmacist shall so notify the prescribing individual
 5 practitioner. No further quantity may be supplied beyond 72 hours
 6 without a new prescription.

7 (f) A prescription for a Schedule II controlled substance
 8 [~~written~~] for a patient in a long-term care facility (LTCF) or for a
 9 patient with a medical diagnosis documenting a terminal illness may
 10 be filled in partial quantities to include individual dosage units.
 11 If there is any question about whether a patient may be classified
 12 as having a terminal illness, the pharmacist must contact the
 13 practitioner before partially filling the prescription. Both the
 14 pharmacist and the practitioner have a corresponding
 15 responsibility to assure that the controlled substance is for a
 16 terminally ill patient. The pharmacist must record the
 17 prescription on an official prescription form or in the electronic
 18 prescription record and must indicate on the official prescription
 19 form or in the electronic prescription record whether the patient
 20 is "terminally ill" or an "LTCF patient." A prescription that is
 21 partially filled and does not contain the notation "terminally ill"
 22 or "LTCF patient" is considered to have been filled in violation of
 23 this chapter. For each partial filling, the dispensing pharmacist
 24 shall record on the back of the official prescription form or in the
 25 electronic prescription record the date of the partial filling, the
 26 quantity dispensed, the remaining quantity authorized to be
 27 dispensed, and the identification of the dispensing pharmacist.

Before any subsequent partial filling, the pharmacist must determine that the additional partial filling is necessary. The total quantity of Schedule II controlled substances dispensed in all partial fillings may not exceed the total quantity prescribed. Schedule II prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness are valid for a period not to exceed 60 days following the issue date unless sooner terminated by discontinuance of the medication.

(g) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a written, electronic, oral, or telephonically [~~or electronically~~] communicated prescription of a practitioner defined by Section 481.002(39)(A) or (D), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner. A prescription under this subsection must comply with other applicable state and federal laws.

(h) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under a written, electronic, oral, or telephonically [~~or electronically~~] communicated prescription issued by a practitioner defined by Section 481.002(39)(C) and only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A

1 prescription issued under this subsection may not be filled or
2 refilled later than six months after the date the prescription is
3 issued and may not be refilled more than five times, unless the
4 prescription is renewed by the practitioner.

5 (k) A prescription for a controlled substance must show:

6 (1) the quantity of the substance prescribed:

7 (A) numerically, followed by the number written
8 as a word, if the prescription is written; ~~[or]~~

9 (B) numerically, if the prescription is
10 electronic; or

11 (C) if the prescription is communicated orally or
12 telephonically, as transcribed by the receiving pharmacist;

13 (2) the date of issue;

14 (2-a) if the prescription is issued for a Schedule II
15 controlled substance to be filled at a later date under Subsection
16 (d-1), the earliest date on which a pharmacy may fill the
17 prescription;

18 (3) the name, address, and date of birth or age of the
19 patient or, if the controlled substance is prescribed for an
20 animal, the species of the animal and the name and address of its
21 owner;

22 (4) the name and strength of the controlled substance
23 prescribed;

24 (5) the directions for use of the controlled
25 substance;

26 (6) the intended use of the substance prescribed
27 unless the practitioner determines the furnishing of this

1 information is not in the best interest of the patient;

2 (7) the ~~[legibly printed or stamped]~~ name, address,
3 Federal Drug Enforcement Administration ~~[registration]~~ number, and
4 telephone number of the practitioner at the practitioner's usual
5 place of business, which must be legibly printed or stamped on a
6 written prescription; and

7 (8) if the prescription is handwritten, the signature
8 of the prescribing practitioner~~[, and~~

9 ~~[(9) if the prescribing practitioner is licensed in~~
10 ~~this state, the practitioner's department registration number]~~.

11 (q) Each dispensing pharmacist shall send all information
12 required by the director, including any information required to
13 complete the Schedule III through V prescription forms, to the
14 director by electronic transfer or another form approved by the
15 director not later than the seventh ~~[15th]~~ day after the date ~~[last~~
16 ~~day of the month in which]~~ the prescription is completely filled.

17 SECTION 3. Subsections (a), (e), and (g) through (j),
18 Section 481.075, Health and Safety Code, are amended to read as
19 follows:

20 (a) A practitioner who prescribes a controlled substance
21 listed in Schedule II shall, except as provided by rule adopted
22 under Section 481.0761, record the prescription on an official
23 prescription form or in an electronic prescription that includes
24 the information required by this section.

25 (e) Each official prescription form or electronic
26 prescription used to prescribe a Schedule II controlled substance
27 must contain:

(1) information provided by the prescribing practitioner, including:

(A) the date the prescription is issued ~~[written]~~;

(B) the controlled substance prescribed;

(C) the quantity of controlled substance prescribed, shown:

(i) numerically, followed by the number written as a word, if the prescription is written; or

(ii) numerically, if the prescription is electronic;

(D) the intended use of the controlled substance or the diagnosis for which it is prescribed and the instructions for use of the substance;

(E) the practitioner's name, address, ~~[department registration number,]~~ and Federal Drug Enforcement Administration number issued for prescribing a controlled substance in this state;

(F) the name, address, and date of birth or age of the person for whom the controlled substance is prescribed; and

(G) if the prescription is issued to be filled at a later date under Section 481.074(d-1), the earliest date on which a pharmacy may fill the prescription;

(2) information provided by the dispensing pharmacist, including the date the prescription is filled; and

(3) for a written prescription, the signatures of the prescribing practitioner and the dispensing pharmacist or for an

1 electronic prescription, the prescribing practitioner's electronic
2 signature or other secure method of validation authorized by
3 federal law.

4 (g) Except for an oral prescription prescribed under
5 Section 481.074(b), the prescribing practitioner shall:

6 (1) legibly fill in, or direct a designated agent to
7 legibly fill in, on the official prescription form or in the
8 electronic prescription, each item of information required to be
9 provided by the prescribing practitioner under Subsection (e)(1),
10 unless the practitioner determines that:

11 (A) under rule adopted by the director for this
12 purpose, it is unnecessary for the practitioner or the
13 practitioner's agent to provide the patient identification number;
14 or

15 (B) it is not in the best interest of the patient
16 for the practitioner or practitioner's agent to provide information
17 regarding the intended use of the controlled substance or the
18 diagnosis for which it is prescribed; and

19 (2) sign the official prescription form and give the
20 form to the person authorized to receive the prescription or, in the
21 case of an electronic prescription, electronically sign or validate
22 the electronic prescription as authorized by federal law and
23 transmit the prescription to the dispensing pharmacy.

24 (h) In the case of an oral prescription prescribed under
25 Section 481.074(b), the prescribing practitioner shall give the
26 dispensing pharmacy the information needed to complete the official
27 prescription form or electronic prescription record.

(i) Each dispensing pharmacist shall:

(1) fill in on the official prescription form or note in the electronic prescription record each item of information given orally to the dispensing pharmacy under Subsection (h) and [7] the date the prescription is filled, and:

(A) for a written prescription, fill in the dispensing pharmacist's signature; or

(B) for an electronic prescription, appropriately record the identity of the dispensing pharmacist in the electronic prescription record;

(2) retain with the records of the pharmacy for at least two years:

(A) the official prescription form or the electronic prescription record, as applicable; and

(B) the name or other patient identification required by Section 481.074(m) or (n); and

(3) send all information required by the director, including any information required to complete an official prescription form or electronic prescription record, to the director by electronic transfer or another form approved by the director not later than the seventh [15th] day after the date [last day of the month in which] the prescription is completely filled.

(j) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be on an official prescription [a] form or in an electronic prescription record that meets the requirements of this section.

1 SECTION 4. Subsections (a) and (i), Section 481.076, Health
2 and Safety Code, are amended to read as follows:

3 (a) The director may not permit any person to have access to
4 information submitted to the director under Section 481.074(q) or
5 481.075 except:

6 (1) an investigator for the Texas Medical Board, the
7 Texas State Board of Podiatric Medical Examiners, the State Board
8 of Dental Examiners, the State Board of Veterinary Medical
9 Examiners, the Texas Board of Nursing, or the Texas State Board of
10 Pharmacy;

11 (2) an authorized officer or member of the department
12 engaged in the administration, investigation, or enforcement of
13 this chapter or another law governing illicit drugs in this state or
14 another state; or

15 (3) if the director finds that proper need has been
16 shown to the director:

17 (A) a law enforcement or prosecutorial official
18 engaged in the administration, investigation, or enforcement of
19 this chapter or another law governing illicit drugs in this state or
20 another state;

21 (B) a pharmacist or practitioner who is a
22 physician, dentist, veterinarian, podiatrist, or advanced practice
23 nurse or physician assistant described by Section 481.002(39)(D)
24 and is inquiring about a recent Schedule II, III, IV, or V
25 prescription history of a particular patient of the practitioner;
26 or

27 (C) a pharmacist or practitioner who is inquiring

1 about the person's own dispensing or prescribing activity.

2 (i) Information submitted to the director under Section
3 481.074(q) or 481.075 is confidential and remains confidential
4 regardless of whether the director permits access to the
5 information under this section.

6 SECTION 5. Subsection (d), Section 481.0761, Health and
7 Safety Code, is amended to read as follows:

8 (d) The director by rule shall authorize a practitioner to
9 determine whether it is necessary to obtain a particular patient
10 identification number and to provide that number on the official
11 prescription form or in the electronic prescription record.

12 SECTION 6. Section 552.118, Government Code, is amended to
13 read as follows:

14 Sec. 552.118. EXCEPTION: OFFICIAL PRESCRIPTION PROGRAM
15 INFORMATION [~~FORM~~]. Information is excepted from the requirements
16 of Section 552.021 if it is:

17 (1) information on or derived from an official
18 prescription form or electronic prescription record filed with the
19 director of the Department of Public Safety under Section 481.075,
20 Health and Safety Code; or

21 (2) other information collected under Section 481.075
22 of that code.

23 SECTION 7. Subsection (c), Section 157.059, Occupations
24 Code, is amended to read as follows:

25 (c) The physician may not delegate:

26 (1) the use of a prescription sticker or the use or
27 issuance of an official prescription form; or

1 (2) the authority to issue an electronic prescription
2 under Section 481.075, Health and Safety Code.

3 SECTION 8. Notwithstanding Section 481.061, Health and
4 Safety Code, as amended by this Act, a person who holds a valid
5 registration under Subchapter C, Chapter 481, Health and Safety
6 Code, on the effective date of this Act is not required to submit
7 the person's Federal Drug Enforcement Administration number to the
8 Department of Public Safety of the State of Texas before October 15,
9 2011.

10 SECTION 9. The change in law made by this Act applies only
11 to the issuance of a prescription on or after the effective date of
12 this Act. The issuance of a prescription before the effective date
13 of this Act is covered by the law in effect when the prescription
14 was issued, and the former law is continued in effect for that
15 purpose.

16 SECTION 10. This Act takes effect September 1, 2011.

S.B. No. 594

David Newhouse
President of the Senate

Joe Straus
Speaker of the House

I hereby certify that S.B. No. 594 passed the Senate on March 24, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0 _____

Patry Spaw
Secretary of the Senate

I hereby certify that S.B. No. 594 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 145, Nays 0, two present not voting. _____

Robert Haney
Chief Clerk of the House

Approved:

17 JUN '11
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4 pm O'CLOCK

JUN 17 2011

Boyd R. Roberts
Secretary of State